

County of Hawai'i

LEEWARD PLANNING COMMISSION

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MAY 01 2012

Mr. Tim Bostock, Director
Tim Bostock Productions, LLC
Waikii Music Festival Producer
P.O. Box 819
Kamuela, HI 96743

Dear Mr. Bostock:

Special Permit Application (SPP 12-000131)

Applicant: Tim Bostock Productions, LLC

Request: To Allow an Annual Music Festival and Related Activities

Tax Map Key: 6-7-001:022 (por.); 6-7-004:004 (por.); 6-7-007:003 (por.)

The Leeward Planning Commission, at its duly held public hearing on April 19, 2012, voted to approve the above-referenced Special Permit to allow an annual music festival and related activities on the Waiki'i Ranch Polo Field and surrounding lands situated on portions of three separate parcels for a combined approximately 14.5 acres of land within the State Land Use Agricultural District. The properties are located along the west side of Saddle Road within the Waiki'i Ranch Subdivision, approximately 6.5 miles south of the Saddle Road/Māmalahoa Highway intersection, Waiki'i, Waikoloa, South Kohala, Hawai'i.

Approval of the request is based on the following:

The applicant requests a Special Permit to allow an annual music festival (Waiki'i Music Festival) and related activities on the Waiki'i Ranch Polo Field and surrounding lands. The Waiki'i Music Festival was an annual event held from 1990 to 2004 and featured Hawaiian musicians, local food vendors, crafts, and artisans. The festival, which was suspended in 2004, never previously sought or secured a Special Permit from the Planning Commission during this period. The applicant proposes to establish a three-day event, including music, drink concessions, souvenir sales and parking. All structures will be temporary, and there will be security and first aid accommodations. The applicant

proposes to limit attendance to 4,000 concertgoers a day, including staff and volunteers, and 100 individuals will be contracted to provide on-site services related to the production of the event. Parking will be provided on-site. Planning and promotion for the event was scheduled to commence in March, 2012. However, there have been no promotion or ticket sales to date.

The criteria for approving a Special Permit are set forth in Rule 6-7 of the Planning Commission Rules. Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the State Land Use Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. In recognizing that lands within the Agricultural district might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the Legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The project site, consisting of the Waiki'i Polo Field and proposed parking areas, is situated within the County's Agricultural (A-80a and A-10a) district, and is not currently being used for agricultural purposes as it is being currently maintained as a polo field. The proposed use is temporary in nature, limited to three (3) consecutive days annually. Thus, the use will not diminish the potential for any future agricultural activity on the property or surrounding lands.

The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The project site is not currently in agricultural use. The concert will be held on the grounds of the existing Waiki'i Polo Field.

Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject request is considered an unusual and reasonable use of agricultural land and will not adversely affect the preservation and agricultural use of the County's prime or unique agricultural lands. Due to the temporary nature of the proposed use, the proposed festival will not permanently alter or commit these lands to a state that would forego its potential use for agricultural purposes.

The desired use would not adversely affect surrounding properties. Lands surrounding the Waiki'i Polo Field are zoned A-20a and A-10a and in agricultural or residential uses, or vacant. According to Real Property Tax Records, the following parcels have been improved:

- TMK: 6-7-004: 002, 20 acres, adjacent to the polo field - dwelling, shed
- TMK: 6-7-004: 045, 10 acres, adjacent to the polo field - dwelling, ohana, barn
- TMK: 6-7-004: 005, 45 acres, on North Alulike Road - dwelling
- TMK: 6-7-007: 004, 10 acres, on Palekaiko Road - dwelling, shed
- TMK: 6-7-007: 005, 10 acres, on Palekaiko Road – dwelling.

To date, this department has not been made formally aware of any concerns from these adjoining landowners regarding the proposed festival. Similarly, the homeowners' association has not yet offered its comments to this office. Limiting the festival to a single event covering a maximum of three consecutive days per year should minimize any significant impacts provided that the organizers of the event coordinate closely with these landowners and their community association. The burden of approximately 4,000 attendees and staff congregating upon a site just under 15 acres in size is a very large imposition and inconvenience upon the immediately surrounding community. But if the community is willing to support and accommodate such an event, then we should be inclined to do so as well.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Due to the magnitude of the event, the Police and Fire Departments have expressed concerns regarding the request. However, any additional services will be limited to the days surrounding the event, and will most likely not burden public agencies to provide extended services for a longer period of time. Access to the parcels is from the Saddle Road to Waiki'i Road. That portion of the Saddle Road that includes the intersection of Waiki'i Road is under the jurisdiction of the State Department of Transportation but maintained by the County. Thus, as both agencies have expressed concerns regarding the 4,000 estimated attendees, their requirements will be included as a condition of approval to mitigate any health, safety, and traffic concerns. There will be a significant increase in traffic during the three-day event; however, the applicant has stated that extra security will be hired during that time to manage traffic flow into the event grounds in a manner that will help to control excessive vehicle queues along the Saddle Road. All parking will be provided on-site near the Waiki'i Polo Field. Note that the commenting agencies did not express strong objection to the festival being held at this particular location, just that adequate traffic controls are established to minimize excessive vehicle queues and congestion along the Saddle Road and its intersections. Conditions of approval are recommended that will require traffic control and mitigation

plans to be approved by the appropriate government agencies prior to the event so that traffic control will be programmed and implemented. An event of this size will unavoidably create traffic congestion along Saddle Road and at its intersection. There is no reasonable way to completely mitigate such impacts. The reasonable approach is to limit the duration and scale of the event, develop and implement a comprehensive traffic control plan, and to create a broad public awareness so people can best prepare for the traffic burdens the festival will create, all of which will be implemented through conditions of this permit.

The Waiki'i Ranch well serves the project site. As requested by the Fire Department, the applicant will be required to provide documentation that sufficient water will be available for fire emergencies. Portable toilets will be available for attendees. The applicant will be required to coordinate with the Department of Health to determine the adequacy of the number of portable toilets proposed for the event. In addition, as food will be served to concertgoers, the applicant will be required to meet the Department of Health's requirements regarding food establishment sanitation. According to the applicant, all other essential utilities and services are available to the project site.

Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. Since then updates to the State Land Use district boundaries have not kept pace with development on the island. Although the project site and surrounding areas are designated for agricultural uses by both State and County land use laws, through the issuance of a Special Permit, various "non-agricultural" services may be allowed.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated in an area classified as Other Important Agricultural land by the Department of Agriculture's ALISH Map, and is designated as "C" and "Fair" for agricultural use by the Land Study Bureau's Overall Master Productivity Rating. The U.S.D.A. Soil Survey identifies the site as Waimea Series (WMC), typically used for pasture and irrigated truck crops. Thus, the project site has a limited practical potential and suitability for active agricultural purposes although the County General Plan designation is Important Agricultural Land. The proposed use will be temporary, limited to three consecutive days annually, and future agricultural opportunities will not be affected. The concert site will revert back to a polo field after the event, and areas used for parking purposes will remain vacant. Thus, the proposed use will not adversely affect the preservation and agricultural use of the County's prime

or unique agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The use will not substantially alter or change the essential character of the land and the present use. The portion of the site proposed for the concert is the Waiki'i Polo Field. Thus, the polo field will be used as a concert venue, but limited to three consecutive days, and is temporary in nature. There will be a significant increase in traffic, proposed to be mitigated by additional security and traffic control. The applicant will be required to submit traffic mitigation and security plans to the affected agencies, for review and approval prior to the commencement of the event. The Police Department has verbally expressed concerns regarding traffic control in and around the project site. Due to the magnitude of the event and the potential for a significant increase in traffic, the applicant will be required to notify the Pohakuloa Military Training Camp, the Mauna Kea Observatory, and FHWA Central Federal Lands Project Manager regarding the event. However, despite significant traffic concerns raised by the DPW, Fire Department, and the Department of Transportation, the proposed use will not permanently alter or change the essential character of the land or its present use as a polo field after the conclusion of the music festival. The project site could be restored to its original condition.

The request will not be contrary to the General Plan and the South Kohala Community Development Plan (SKCDP). The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in an area identified as Important Agricultural Lands, which include lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors.

The South Kohala Community Development Plan (SKCDP) is intended to direct growth to appropriate areas in conjunction with necessary infrastructure and public facilities, while preserving valued natural and historic assets. The plan identifies South Kohala's priority issues and develops policies and action programs to address these priority issues. Although the SKCDP does not specifically address the project area per se, the proposed use will not contradict any policies suggested for the Waimea community and surrounding areas. The proposed use will not impact Waimea's sense of place, responsible growth, or environmental stewardship stated as Waimea Policies 1 to 3, respectively. No activities are proposed near the existing pu'u site located in close proximity to the concert area. The site plan identifies the pu'u area as "off limits", and the applicant will be required to erect signs to protect the pu'u site. The event will feature

Hawaiian musicians and local vendors, promoting and showcasing Hawaiian culture. The Department of Health requires the applicant to meet the requirements of Chapter 12, Food Establishment Sanitation Code, as well as to comply with Title 11, Hawai'i Administrative Rules, Chapter 11 (Sanitation), Section 11-11-9 regarding portable toilets. The applicant shall provide notice to the Planning Department that the Department of Health has been contacted.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The properties are located off Saddle Road, approximately twenty (20) miles from the closest shoreline, and not located in the Special Management Area. Given that the properties have been developed, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain areas that traverse the project site. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline or mountains, scenic and open space resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Based on the above considerations, the proposed request to allow an annual three-day music festival and related activities is an unusual and reasonable use of land which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. There shall be only one (1) music festival event held annually, occurring over the course of a maximum of three (3) consecutive days. The music festival hours shall be limited from 10:00 a.m. to 10:00 p.m. for the three (3) consecutive days. The applicant shall notify the Planning Department, in writing, of the date(s) of the event at least two (2) months prior to the initial event and three (3) months prior to each annual event.
3. As requested by the Police Department, a detailed comprehensive security and traffic control plan for the music festival shall be developed in consultation with the Police and Fire Departments with approval by the Planning Director at least one (1) month prior to each annual event.
4. The applicant shall notify the Fire Department in writing, with a copy to the Planning Director, of the availability and location of adequate water source for fire control measures, at least one (1) month prior to the initial music festival.

5. The applicant shall comply with all applicable requirements of the Fire Department regarding Fire Department Access Road(s) as stated in the Fire Department's March 9, 2012 memo. Such requirements include, at a minimum, specific roadway width requirements with an approved turnaround area, turning radius, unobstructed vertical clearance, and an access road comprised of an all-weather driving surface to support 25 tons of fire apparatus; the maximum grade of the access road not to exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces; a limitation on the angle and approach of the access road, prior to the commencement of the event. The applicant shall provide written documentation to the Planning Director that Fire Department access requirements are satisfied, at least one (1) month prior to the initial music festival.
6. Access to the project site shall meet the requirements of the Department of Transportation. Meeting with the approval of the Department of Transportation, the applicant shall develop a plan that will address the following items at least one (1) month prior to each annual event:
 - a. Provide public notice(s) to travelers on the Saddle Road and Māmalahoa Highway during the event;
 - b. Conduct individual outreach efforts to the Pohakuloa Military Training Camp to coordinate the movement of military equipment and exercises; the Mauna Kea Observatory for construction or maintenance; and, if applicable, the FHWA Central Federal Lands for the Saddle Road construction project and the project construction contractor; and,
 - c. Develop a backup strategy plan to prevent queues on Saddle Road in the event vehicle arrivals exceed projected traffic estimates.
7. The applicant shall provide temporary traffic control advisory signs on Saddle Road entry points during all event preparation and activities.
8. The applicant shall meet the requirements of the Department of Health, Chapter 12, Food Establishment Sanitation Code, as well as Title 11, Hawai'i Administrative Rules, Chapter 11 (Sanitation), Section 11-11-9 regarding portable toilets. The applicant shall provide notice to the Planning Department that all applicable requirements of the Department of Health have been satisfied, prior to the commencement of the music festival.

9. The noise level during the music festival shall comply with the State Department of Health noise standards for agricultural properties and shall not exceed 70 decibels at any property boundary.
10. The applicant shall erect signs proximate to the pu'u site indicated on the site plan, identifying the area as "off limits."
11. If alcohol is proposed to be served at any festival, the applicant shall obtain a special 3-day liquor permit from the Department of Liquor Control, prior to the commencement of the music festival. Alcohol use shall be regulated by and comply with all State and County regulations and permit requirements.
12. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval at least one (1) month prior to the initial music festival.
13. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
14. Any complaints received by the applicant shall be forwarded to the Planning Director. The Planning Director shall investigate all complaints and, if necessary, suspend the permit. If the complaint(s) is(are) not resolved, the Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or has caused any unreasonable interference or nuisance upon the surrounding community, the permit may be revoked.
15. The annual music festival and related activities shall be conducted in a manner that is substantially representative of plans and details as contained in the Special Permit application dated February 21, 2012 (Planning Department Exhibit 1).
16. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
17. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.


Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. Tim Bostock, Director
Tim Bostock Productions, LLC
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Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,


Geraldine Giffin, Chairman
Leeward Planning Commission

Lbostock01spp12-131

cc: Mr. William L. Moore
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
DOT-Highways, Honolulu
State Department of Health
Fire Department
Chief's Office, Police Department
Captain Aimee Wana, Police Department, South Kohala Patrol
Department of Environmental Management
Mr. Gilbert Bailado ✓